

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS**

**Tandy S. Ross,**

**Plaintiff,**

v.

**Case No. 05-2221-JWL**

**John E. Potter,  
United States Postmaster General,**

**Defendant.**

**MEMORANDUM & ORDER**

On September 8, 2006, defendant filed a motion for summary judgment, motion to strike certain damage claims and motion to deny request for trial by jury (doc. 43). Plaintiff did not file a response to defendant's motion within the time period provided in D. Kan. Rule 6.1(e)(2). Thus, the court could have considered and decided defendant's motion as an uncontested motion and could have granted the motion without further notice to plaintiff. *See* D. Kan. R. 7.4. Nonetheless, in an abundance of caution, the court issued an order directing plaintiff to show good cause in writing to the court, on or before Monday, October 30, 2006, why she failed to respond to defendant's motion in a timely fashion.<sup>1</sup> The court further directed plaintiff to respond to the motion on or before Monday, October 30, 2006. As of the date of this order, plaintiff has not filed a response to the show cause order and has not filed a response to

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<sup>1</sup>The court's order to show cause was filed electronically and, due to plaintiff's pro se status, was also mailed to plaintiff's residence. While the court has no reason to believe that plaintiff did not receive a copy of the order to show cause, plaintiff may file a motion to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e) within 10 days of the date of the judgment (which will be entered the same date as the date of this order) if she did not receive a copy of the order to show cause.

defendant's motion. Thus, the court considers defendant's motion as uncontested and, accordingly, grants the motion. In so holding, the court specifically concludes that certain aggravating factors present in this case outweigh the judicial system's strong predisposition to resolve cases on their merits. *See Murray v. Archambo*, 132 F.3d 609, 611 (10th Cir. 1998) (prior to outright dismissal for failure to comply with local court rules, court must consider the degree of actual prejudice to the defendant; the amount of interference with the judicial process; and the culpability of the litigant).

Specifically, the court notes that plaintiff, as of the date of this order, has still not responded to defendant's motion nor has she contacted the court in any way regarding this case. Plaintiff's failure to respond to defendant's motion in any way and her failure to contact the court in any way demonstrates that her culpability is quite high. *Compare id.* (reversing district court's dismissal on uncontested motion where plaintiff mailed his response more than three days prior to the deadline, demonstrating "little or no culpability on his part in causing the delay") and *Hancock v. City of Oklahoma City*, 857 F.2d 1394, 1396 (10th Cir. 1988) (plaintiff herself was not guilty of any dereliction where plaintiff's counsel overlooked motion and therefore failed to respond, resulting in delay of almost two weeks but, once discovered, responded promptly). Moreover, in such circumstances, denying defendant's motion would prejudice defendant in terms of continued time spent and expenses incurred on a case in which the plaintiff has shown no interest even after ample notice from the court. Similarly, denying defendant's motion would interfere with the judicial process in terms of docket management and the need for a finality to litigation. In other words, the court should not have to continue to

manage this case on its docket when plaintiff herself has taken no initiative to keep the case on the court's docket. *Compare Murray*, 132 F.3d at 611 (reversing district court's dismissal on uncontested motion where plaintiff's response to motion was received one day after the fifteen-day deadline and no prejudice to defendants could have resulted from this delay, nor could it have caused interference with the judicial process) *and Hancock*, 857 F.2d at 1396 (where plaintiff's counsel overlooked motion and therefore failed to respond, resulting in delay of almost two weeks but, once discovered, responded promptly, defendant would not have been prejudiced in any legal or equitable sense by court's consideration of response and any inconvenience to the court was not so severe a burden as to justify dismissal).

For the foregoing reasons, the court grants defendant's motion for summary judgment, motion to strike certain damage claims and motion to deny request for trial by jury (doc. 43). Summary judgment in favor of defendant is entered on all claims asserted by plaintiff.

**IT IS SO ORDERED.**

Dated this 1<sup>st</sup> day of November, 2006, at Kansas City, Kansas.

s/ John W. Lungstrum  
John W. Lungstrum  
United States District Judge